

No. 10,773

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

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FRANK LAURENT,

*Appellant,*

VS.

UNITED STATES OF AMERICA,

*Appellee.*

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BRIEF FOR APPELLEE.

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PAUL P. O'BRIEN,  
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## BRIEF FOR APPELLEE.

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This is an appeal from a judgment and order made by the United States District Court for the Southern Division of the Northern District of California, sentencing appellant on an indictment containing one count, following appellant's conviction on the same, to serve two years, and in addition thereto, to pay a fine in the sum of \$5000.00.

The indictment in this case names seven defendants, all of whom, with the exception of appellant, pleaded guilty.

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## JURISDICTIONAL STATEMENT.

Jurisdiction is conferred upon the trial Court by 28 U.S.C.A., Section 41 (2), and upon this Court by 28 U.S.C.A., Section 225.

**THE INDICTMENT.**

“IN THE SOUTHERN DIVISION OF THE  
UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

(Title 18 U.S.C.A. 88)

In the November, 1943 term of said Division of said District Court, the Grand Jurors thereof, upon their oaths present: THAT

RUSSELL S. YOUMANS,  
PERCY NEWFORD,  
ARTHUR GRENIER,  
ALBERT NORWITT,  
FRANK LAURENT,  
CHARLES E. CORSIGLIA, and  
BERNARD R. KERNS,

whose full and true names, and the full and true name of each of whom, except as herein mentioned, are otherwise unknown to this Grand Jury (hereinafter called ‘said defendants’), at a time and place to the Grand Jurors unknown, did knowingly, wilfully, unlawfully and feloniously conspire, combine, confederate and agree together, and with divers other persons to the Grand Jurors unknown, unlawfully and feloniously to commit offenses against the United States of America, to-wit, violations of the Second War Powers Act, Title 50 U.S.C.A. Section 633, and rationing regulations prescribed and made in pursuance of the authority granted in said Second War Powers Act pertaining to a rationed commodity, to-wit, gasoline, and to defraud the United States of America, in the exercise and control of its lawful

governing powers and functions, by impairing, obstructing and defeating the due and proper administration of the Second War Powers Act, and ration regulations made in pursuance of the authority granted in said Act, and the rules and regulations prescribed in reference thereto for the enforcement of the provisions of said Act, in the manner following, to-wit:

(a) By the said defendants and each of them unlawfully and wilfully acquiring, using, permitting the use of, possessing and controlling counterfeited and forged ration documents, to-wit, counterfeited and forged C-2 gasoline mileage ration coupons, under circumstances which would be in violation of Section 2.6 of General Ration Order No. 8 if the said counterfeited and forged ration documents were genuine, that is to say, the said defendants, or any of them, were not then and there or at any time, persons, or the agent or agents of persons, to whom said C-2 gasoline mileage ration coupons were issued, or by whom said C-2 gasoline mileage ration coupons were acquired in accordance with the provisions of Ration Order No. 5 (c), as the said defendants then and there well knew.

(b) By the said defendants, and each of them, unlawfully and wilfully transferring and assigning counterfeited and forged ration documents, to-wit, counterfeited and forged C-2 gasoline mileage ration coupons, under circumstances which would be in violation of Section 2.6 of General Ration Order No. 8 if the said counterfeited and forged ration coupons were genuine, that is to say, the said defendants were



not then and there, or at any time, persons, nor the agent or agents of any persons, to whom said ration documents were issued, or by whom said ration documents were acquired in accordance with the provisions of a ration order, nor were said defendants, or any of them, then and there, or at any time, persons authorized to so transfer or assign said ration documents in accordance with the provisions of a ration order, to-wit, Gasoline Mileage Ration Order No. 5 (c), or any other ration order, as the said defendants then and there well knew.

(c) By the said defendants and each of them, with the intent and for the purpose of defrauding the United States in the exercise and control of its lawful governmental powers and functions, impairing, obstructing, frustrating and defeating the due and proper administration of the Second War Powers Act, and the ration regulations promulgated and issued thereunder pertaining to a rationed commodity, to-wit, gasoline, by unlawfully acquiring, using, permitting the use of, transferring, possessing and controlling counterfeited and forged ration documents, to-wit: counterfeited and forged C-2 gasoline ration coupons, under circumstances which would be in violation of Section 2.6 of General Ration Order No. 8 if the said counterfeited and forged ration documents were genuine, that is to say, said defendants, or any of them, were not at any time persons or the agent or agents of persons to whom such ration documents were issued or by whom the same were acquired from a War Price and Rationing Board of the Office of Price Adminis-



tration, a department and agency of the United States, in accordance with Ration Order 5 (c) or any other ration order, nor did said defendants, or any of them, transfer said ration documents in accordance with the provisions of Ration Order No. 5 (c) or any other ration order; and by unlawfully acquiring, using, permitting the use of, transferring, possessing and controlling counterfeited and forged ration documents, to-wit, counterfeit and forged C-2 gasoline mileage coupons, with the intent and for the purpose of unlawfully obtaining for themselves and each of them, and with the intent and for the purpose of enabling other persons to the Grand Jurors unknown to unlawfully obtain a rationed commodity, to-wit, gasoline, to which said defendants, or any of them, or any of said persons, were not at any time herein mentioned entitled, by the use and transfer of said counterfeited and forged documents.

(d) By the said defendants, and each of them, obtaining and attempting to obtain for themselves, and each of them, and for other persons to the Grand Jurors unknown, a rationed commodity, to-wit, gasoline, without presenting the prescribed ration coupons therefor; that during the existence of said conspiracy and in furtherance thereof, and to effect its objects, in the said Division and District, and within the jurisdiction of this Court, one or more of said defendants, as hereinafter mentioned by name, did the following overt acts, to-wit:

1. That on or about the 10th day of February, 1944, in the City and County of San Francisco, State of

California, the said defendant Percy Newford transferred to the said defendant Arthur Grenier, 6 sheets, each sheet containing 64 counterfeited and forged C-2 gasoline mileage ration coupons.

2. That on or about the 9th day of February, 1944, in the City and County of San Francisco, State of California, the said defendant Arthur Grenier met and held a conversation with one Angelo Guisti.

3. That on or about the 9th day of February, 1944, in the City and County of San Francisco, State of California, the said defendant Arthur Grenier met and held a conversation with one Dominic Rossi.

4. That on or about the 16th day of February, 1944, in the City and County of San Francisco, State of California, the said defendant Percy Newford transferred to one Angelo Guisti, 16 sheets, each sheet containing 64 counterfeited and forged C-2 gasoline mileage ration coupons.

5. That on or about the 16th day of February, 1944, in the City and County of San Francisco, State of California, the said defendant Russell S. Youmans transferred to the said defendant Albert Norwitt, 25 sheets, each sheet containing 64 counterfeited and forged C-2 gasoline mileage ration coupons.

6. That on or about the 16th day of February, 1944, in the City and County of San Francisco, State of California, the said defendant Russell S. Youmans transferred to the said defendant Percy Newford, 30 sheets, each sheet containing 64 counterfeited and forged C-2 gasoline mileage ration coupons.

7. That on or about the 6th day of February, 1944, in the City and County of San Francisco, State of California, the said defendant Russell S. Youmans transferred to the said defendant Charles E. Corsiglia, 9 sheets, each sheet containing 64 counterfeited and forged C-2 gasoline mileage ration coupons.

8. That on or about the 6th day of February, 1944, in the City and County of San Francisco, State of California, the said defendant Charles E. Corsiglia transferred to the said defendant Bernard R. Kerns, 9 sheets, each sheet containing 64 counterfeited and forged C-2 gasoline mileage ration coupons.

9. That on or about the 11th day of February, 1944, in the City and County of San Francisco, State of California, the said defendant Percy Newford transferred to the said defendant Frank Laurent, 40 sheets, each sheet containing 64 counterfeited and forged C-2 gasoline mileage ration coupons.

10. That on or about the 16th day of February, 1944, in the City and County of San Francisco, State of California, the said defendant Russell S. Youmans, at his residence at 915 Pacific Avenue, San Francisco, California, had in his possession, 1258 sheets, each sheet containing 64 counterfeited and forged C-2 gasoline mileage ration coupons.

FRANK J. HENNESSY,

FRANK J. HENNESSY,

United States Attorney.

(Approved as to Form:

R. B. M-M)'' (Tr. pp. 2-8.)

**APPELLANT'S ASSIGNMENTS OF ERROR.****1.**

That the learned trial judge committed errors in law arising during the course of the trial, and erred in the decision of questions of law arising during the course of the trial.

**2.**

That the evidence produced and received upon the trial of said cause was insufficient as a matter of law to justify the verdict of the jury.

**3.**

That the learned trial judge erred in denying the motion made by counsel for defendant for a directed verdict of "Not Guilty" at the conclusion of the case of the prosecution, for the reason that taking said evidence in said case is not sufficient as a matter of law to support a verdict of "Guilty".

**4.**

That the trial Court erred in not instructing the jury to return a verdict of "Not Guilty" in favor of appellant.

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**FACTS OF THE CASE.**

At approximately 7:30 P.M., on February 16, 1944, one Frank Brush, an investigator for the Office of Price Administration, at San Francisco, together with two police inspectors, visited the home of one Russell



S. Youmans, at 915 Pacific Avenue, in San Francisco, and at said time and place received from Youmans a suitcase containing 1258 sheets of "C-2" counterfeit gasoline mileage ration coupons, also the sum of \$10,482.00.

Following this meeting with Youmans, and on February 23, 1944, at 1355 Market Street, San Francisco, Brush had a conversation with appellant in regard to the C-2 coupons pasted on the bingo sheets which had been turned in by appellant for replacements of gasoline. The appellant identified his name on the bingo sheets, and stated that he had exchanged five gallons of gasoline for each "C-2" coupons that appeared on the sheets; that he had acquired the coupons in the normal course of business; and that the license numbers appearing on the coupons had been placed there by the customers, and that he had delivered gasoline for every license number appearing on the sheets. Brush advised appellant that 325 of the 387 coupons appearing on the bingo sheets were counterfeit and that appellant could not have taken the counterfeit coupons if he had checked the license number with the coupons, as the sheets did not have identifications on the top, to which appellant replied that he did not know anything about it.

The coupons appearing on the bingo sheets had been turned in by appellant to the distributors for the replacement of gasoline sold. Brush further testified that the coupons appearing on the bingo sheets marked "X" on the face thereof were genuine coupons, the balance being counterfeit.

Appearing on two of the counterfeit coupons was the license number 01G627; appearing on three of the counterfeit coupons was the license number 24B575; appearing on three of the counterfeit coupons was the license number 02G699; appearing on one of the counterfeit coupons was the license number 70A319; appearing on two of the counterfeit coupons was the license number 32B786; appearing on two of the counterfeit coupons was the license number 99F271; appearing on three of the counterfeit coupons was the license number 26B996. The balance of the license numbers appearing on the coupons were fictitious numbers.

Ernest N. Hart testified that he owned a Plymouth 4-door sedan, license number 01G627; that he used "A" coupons for the same; that he never had any "C" coupons; that he had never bought gasoline from the Post Street Garage, nor had any of his family done so. (Tr. p. 36.)

John E. Duff testified that he owned a Lincoln sedan, license number 24B575; that he used "A" coupons for the same; that he never had any "C-2" coupons, and never purchased gasoline from the garage at 740 Post Street. (Tr. p. 37.)

William Irving Smith testified that the license number of his car was 02G699; that he used "A" coupons for the same; that he never delivered three "C-2" coupons to the Post Street Garage, nor did any member of his family. (Tr. p. 38.)



William Singer testified that the license number of his car is 70A319; that he used "A" coupons, and never purchased any gasoline from the Post Street Garage. (Tr. pp. 38, 39.)

Bernard A. Beukers testified that the license number of his car is 32B786; that he never purchased gasoline at the Post Street Garage. (Tr. p. 39.)

Bert F. Biscotto testified the license number of his car is 99F271; that he used "A" coupons for the same; and that he never purchased any gasoline from the Post Street Garage. (Tr. pp. 39, 40.)

Frank Cushere testified that the license number of his car was 26B996; that he used "A" coupons for the same; that he had never had "C-2" coupons issued to him, nor had he ever purchased gasoline at the Post Street Garage. (Tr. p. 40.)

Percy Newford testified that he was a defendant in the case, having pleaded guilty to the indictment, and was then awaiting the judgment of the Court; that he knew the defendants Russell Youmans and Frank Laurent; that he met Frank Laurent about November or December, 1943, at Laurent's garage at 740 Post Street, about four o'clock; that at this time and place he had a conversation with Laurent, in which he asked Laurent if he wanted any gas tickets. Laurent said he could use a couple, and Newford sold to Laurent two sheets, 64 coupons to a sheet, for \$20.00 a sheet which he, Newford, had obtained from Youmans. Later, and between the latter part of January and the 10th of February, Newford met Laurent about 9:00 o'clock at

night at the Russian Tea House on Geary Street, between Fillmore and Steiner; Laurent came in with some other gentleman. Newford had a conversation with Laurent, in which Laurent stated he needed a lot of gas sheets, and he said he would give Newford \$600.00 for forty of them. Newford told Laurent he did not want to have anything to do with them, and Laurent said, "*If you don't sell them I can go right down to Pacific Street to the same address you get them and get all I want.*" (Italics supplied.) Following a brief conversation, Newford sold Laurent forty sheets for \$600.00; he delivered the sheets to Laurent and received from Laurent the \$600.00. The coupons sold by Newford to Laurent were obtained by Newford from Youmans.

Newford further testified that Youmans lived on Pacific Street; that the coupons being Government Exhibit in Evidence 3, were identical with the coupons sold to Laurent at that time and place. Newford further testified that he had then and there asked Laurent why he came to see him when Laurent had other people he used to get these coupons from, to which Laurent replied that the other people did not have any more and he came to see Newford *as it was too late to see this other party on Pacific Street.* (Italics supplied.) Newford asked Laurent how much he sold the coupons for, to which Laurent replied, "None less than \$35 a sheet".

On cross-examination Newford reiterated his testimony that he had first met Laurent during November or December, at Laurent's garage, and sold coupons

to Laurent for \$20.00 a sheet; that he only knew the man with Laurent by the name of George; that George brought Laurent to the Russian Tea Room, where at first Laurent wanted to buy forty sheets and would pay \$15.00 apiece for each one; that Newford at first declined to do business, but later sold the forty sheets to Laurent; that George did not introduce Laurent to Newford, as he, Newford, already knew Laurent; that at this conversation Laurent stated that he had been getting coupons from the same address as Newford obtained them on Pacific Street. (Tr. pp. 32-36.)

Ida Adelaide Oppenheim testified that she lived at 701 Post Street, and during the months of January and February, 1944, parked her car at the Post Street Garage; that she knew Frank Laurent; that he was the owner or operator of the Post Street Garage; that she had a conversation with Laurent in connection with the sale of gasoline coupons in the early part of February, or the last part of January, 1944, this conversation taking place at Laurent's garage; that in answer to her question to Laurent, how was she to get gas, he said, "Why don't you buy a book for \$11?" (Tr. p. 44.)

Thomas B. Foster testified that for 43 years he had been connected with the United States Secret Service, and for the past six years had been Supervising Agent of the Fourteenth District Secret Service; that during the course of his business with the Secret Service he had made a study of counterfeit bills and documents; that he had examined Government's Exhibit No. 1, being 1258 sheets of "C-2" gasoline coupons, and that

the same were counterfeit; that he had examined Government's Exhibit No. 3 in Evidence, being the coupons appearing on the bingo sheets of appellant; that most of the same were counterfeit; that the counterfeit coupons appearing on Government's Exhibit No. 3 were made by the same party as the coupons on Government's Exhibit No. 1, and were of the same make. (Tr. pp. 45-48.)

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### **ARGUMENT.**

It is the contention of appellant that the trial Court erred in admitting the testimony of the witness Frank Brush relating to the visit of Brush to the home of Russell Youmans and the 1258 sheets of "C-2" gasoline coupons, as well as \$10,472.00 in cash; that if appellant was not present such testimony was hearsay and in no way binding upon appellant; and, further, that the trial Court erred at the conclusion of the Government's case in denying appellant's motion for an advised verdict, for the reason that no evidence of a conspiracy was introduced during the course of the trial. In this connection it will be remembered that the indictment charged all of the persons named therein with conspiring to commit offenses against the United States, to-wit, violations of the Second War Powers Act, Title 50 U.S.C.A., Section 633, and rationing regulations prescribed and made in pursuance of the authority granted in said Act pertaining to a rationed commodity, to-wit, gasoline, and to defraud the United States of America in the exercise and con-



trol of its lawful governmental powers and functions by impairing, obstructing and defeating the due and proper administration of the Second War Powers Act and rationing regulations made in pursuance of the authority granted in said Act, and the rules and regulations prescribed in reference thereto for the enforcement of the provisions of said Act.

There can be no question from the evidence as reflected in the record in this case that the appellant on two occasions purchased gasoline coupons from his co-defendant Percy Newford, nor is there any question, as reflected in the record, that the coupons so obtained by the appellant were identical with, and made by the same person or persons making the counterfeit coupons found in the possession of appellant's co-defendant Russell Youmans. And it is further established that appellant had relations in connection with gasoline coupons with his co-defendant Russell Youmans and had knowledge of Youmans' unlawful activities in the sale and distribution of coupons. All of this was shown in the testimony of Newford. That the appellant unlawfully purchased coupons from his co-defendant Newford is established by Newford's testimony, and is further corroborated by the appearance of said counterfeit coupons on appellant's bingo sheets. These "C-2" coupons had been used by appellant in replenishing his gasoline stock, and fictitious license numbers had been placed thereon, as was established by the record.

Appellant concedes that if the testimony of the witness Newford be accepted as true, which obviously

was done by the jury, as evidenced by the verdict against appellant, appellant would be guilty of a substantive charge of unlawfully purchasing gasoline coupons, but under the facts in the present case it had not been established that appellant was engaged in a conspiracy with his co-defendants unlawfully to acquire, possess, or distribute gasoline coupons. Appellant submits in his argument on this point there can not be a conspiracy between a seller and a buyer of contraband goods. This might be a correct statement of the law if the contraband by its nature was limited in its use to the seller or the buyer, but as is established by the facts in this case the contraband was counterfeit "C-2" gasoline coupons, unlawfully acquired, possessed and distributed by the appellant, and which contraband by its very nature contemplates necessarily that the same must be, under the facts in this case, unlawfully acquired, possessed and distributed. The purchaser in acquiring the coupons, as was done in this case, knows of necessity that the seller, too, was in unlawful possession of the same and was in violation of the law in selling the same, as he, the purchaser, is in violation of the law in acquiring the coupons, and in doing so it is, nor was not, intended that the offense should stop upon appellant's purchase of the contraband, but on the contrary appellant purchased the same for the purpose of continuing to violate the law in distributing and using the same unlawfully in the sale and acquisition of the gasoline.



As was said in the case of *Lew Moy v. United States*, 237 F. 51:

“The acts and statements of one co-conspirator done or entered in facilitating the purpose of the conspiracy are admissible against others. It is not necessary that each conspirator participate in each step or stage of the common general design. One of them may do one thing, another, another. Some may take major parts while the participation of others may be in a minor degree.”

That the act of one conspirator in furtherance of the common design is the act of all was held in the cases of

*Olmstead v. United States* (C.C.A. 9), 5 F. (2d) 712;

*Coates v. United States* (C.C.A. 9), 59 F. (2d) 173.

Also see the case of *United States v. Lesher* (C.C.A. 9), 59 F. (2d) 53, in which case the Court said:

“The sole issue is alleged error in overruling defendant’s motion for a directed verdict. This case, like all like cases, has its difficulties. The court does not weigh the evidence, but considers whether there is any or sufficient evidence to sustain a verdict. See *Ford v. United States* (C.C.A.), 44 F. (2d) 754. The trial judge must, in the exercise of sound discretion, determine whether upon the evidence produced a verdict can be sustained, not weigh the evidence; if there is evidence, it must be submitted; if not, it is pronouncedly his duty to direct a verdict.”

Also in considering the evidence on a motion for a directed verdict, the evidence must be considered in its most favorable aspect to the appellee.

*United States v. Scarborough*, 57 F. (2d) 137;

*Knable v. United States*, 9 F. (2d) 567;

*Benton v. United States*, 202 F. 344;

*Kelly v. United States*, 258 F. 392.

Also, in the case of *United States v. Valenti*, 134 F. (2d) 362, at page 364, the Court said:

“It is the essence of a conspiracy conducted by other than the veriest bunglers that its terms be not expressed, but only gathered by implication from conduct.”

In this connection, it will be remembered that all of the defendants were charged with unlawfully acquiring, possessing, and distributing gasoline coupons with the intent and for the purpose of unlawfully obtaining for themselves, and with the intent and for the purpose of enabling other persons to the Grand Jurors unknown to unlawfully obtain a rationed commodity, to-wit, gasoline, to which said defendants, or any of them, or any of said persons, were not at any time herein mentioned entitled, by the use and transfer of said coupons.

On this point see the case of *Direct Sales Co. v. United States*, 319 U. S. 703, which case clearly distinguishes the *Falcone* case, 311 U. S. 204, which case is heavily relied upon by appellant, to the effect that:

“So long as the seller does not know there is a conspiracy between the buyer and others, he can

not be guilty of conspiring with the buyer to further the latter's illegal and known intended use, by selling goods to him."

And in distinguishing the *Falcone* case, the Court, at page 710 stated:

"The commodities sold there were articles of free commerce, sugar, cans, etc. They were not restricted as to sale by order form, registration, or other requirements. When they left the seller's stock and passed to the purchaser's hands, they were not in themselves restricted commodities, incapable of further legal use except by compliance with rigid regulations, such as apply to morphine sulfate. *The difference is like that between toy pistols or hunting-rifles and machine guns.* All articles of commerce may be put to illegal ends. But all do not have inherently the same susceptibility to harmful and illegal use. Nor, by the same token, do all embody the same capacity, from their very nature, for giving the seller notice the buyer will use them unlawfully. Gangsters, not hunters or small boys, comprise the normal private market for machine guns. So drug addicts furnish the normal outlet for morphine which gets outside the restricted channels of legitimate trade.

"*This difference is important for two purposes. One is for making certain that the seller knows the buyer's intended illegal use. The other is to show that by the sale he intends to further, promote and cooperate in it. This intent, when given effect by overt acts, is the gist of conspiracy.* While it is not identical with mere knowledge that another purposes unlawful action, it is not un-

related to such knowledge. Without the knowledge, the intent cannot exist. *United States v. Falcone*, supra. Furthermore, to establish the intent, the evidence of knowledge must be clear, not equivocal. *Ibid.* This, because charges of conspiracy are not to be made out by piling inference upon inference, thus fashioning what, in that case, was called a dragnet to draw in all substantive crimes.

“The difference between sugar, cans, and other articles of normal trade, on the one hand, and narcotic drugs, machine guns and such restricted commodities, on the other, arising from the latter’s inherent capacity for harm and from the very fact they are restricted, makes a difference in the quantity of proof required to show knowledge that the buyer will utilize the article unlawfully.” (*Italics ours.*)

Also, see the case of *United States v. Bruno*, 105 F. (2d) 921. (Note this case was reversed in the Supreme Court in 308 U. S. 287, but on an entirely different point than is involved in the instant case.)

“The first point was made at the conclusion of the prosecution’s case: the defendants then moved to dismiss the indictment on the ground that several conspiracies had been proved, and not the one alleged. The evidence allowed the jury to find that there had existed over a substantial period of time a conspiracy embracing a great number of persons, whose object was to smuggle narcotics into the Port of New York and distribute them to addicts both in this city and in Texas and Louisiana. This required the cooperation of



four groups of persons; the smugglers who imported the drugs; the middlemen who paid the smugglers and distributed to retailers; and two groups of retailers—one in New York and one in Texas and Louisiana—who supplied the addicts. The defendants assert that there were, therefore, at least three separate conspiracies; one between the smugglers and the middlemen, and one between the middlemen and each group of retailers. The evidence did not disclose any cooperation or communication between the smugglers and either group of retailers, or between the two groups of retailers themselves; however, the smugglers knew that the middlemen must sell to retailers, and the retailers knew that the middlemen must buy of importers of one sort or another. *Thus the conspirators at one end of the chain knew that the unlawful business would not, and could not, stop with their buyers; and those at the other end knew that it had not begun with their sellers.* That being true, a jury might have found that all the accused were embarked upon a venture, in all parts of which each was a participant, and an abettor in the sense that the success of that part with which he was immediately concerned was dependent upon the success of the whole. That distinguishes the situation from that in *United States v. Peoni*, 2 Cir., 100 F. 2d 401, where Peoni, the accused, did not know that Regno, his buyer, was to sell the counterfeit bills to Dorsey, and had no interest in whether he did, since Regno might equally well have passed them to innocent persons himself. *Rudner v. United States*, 6 Cir., 281 F. 516, 519, 520; *Jezewski v. United States*, 6 Cir., 13 F. 2d 599, 602. It might still be argued that there were two conspiracies; one including the smugglers, the middlemen and the New York

group, and the other, the smugglers, the middlemen and the Texas & Louisiana group, for there was apparently no privity between the two groups of retailers. That too would be fallacious. Clearly, quoad the smugglers, there was but one conspiracy, for it was of no moment to them whether the middlemen sold to one or more groups of retailers, provided they had a market somewhere. So too of any retailer; he knew that he was a necessary link in a scheme of distribution, and the others, whom he knew to be convenient to its execution, were as much parts of a single undertaking or enterprise as two salesmen in the same shop. We think therefore that there was only one conspiracy, and it is not necessary to decide how far *Berger v. United States*, 295 U. S. 78, 55 S. Ct. 629, 79 L. Ed. 1314, would independently have covered the situation, had there been more than one." (*Italics ours.*)

As to the sufficiency of the evidence generally, see the case of *Abrams v. United States*, 250 U. S. 616, 619:

"The claim chiefly elaborated upon by the defendants in the oral argument and in their brief is that there is no substantial evidence in the record to support the judgment upon the verdict of guilty and that the motion of the defendants for an instructed verdict in their favor was erroneously denied. A question of law is thus presented, which calls for an examination of the record, not for the purpose of weighing conflicting testimony, but only to determine whether there was some evidence, competent and substantial, before the jury, fairly tending to sustain the verdict." (*Citing cases.*)



To the same effect see *Maugeri v. United States*, (C.C.A. 9), 80 F. (2d) 199, at 202; and *Hemphill v. United States* (C.C.A. 9), 120 F. (2d) 115, at 117.

It is respectfully submitted that the facts in the instant case fall squarely within the rule as stated in the *Direct Sales* case, *supra*, and the *Bruno* case, *supra*. In the aforementioned cases, the contraband was narcotics; in the present case the contraband was counterfeit gasoline coupons which had been unlawfully acquired, possessed and transferred. In view of the rationing regulations prohibiting the irregular acquisition, possession and transfer of gasoline coupons, the appellant in trafficking in counterfeit coupons was clearly in the position of a conspirator, as set forth in the *Bruno* case. He knew "that the unlawful venture had not started with his seller", and that it would not, and did not, stop with his purchase of the counterfeit "C-2" coupons.

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### CONCLUSION.

It is respectfully submitted that the evidence is sufficient to sustain the verdict of guilty, that appellant has shown no error, and that the judgment should be affirmed.

Dated, San Francisco,  
January 15, 1945.

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